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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

LESLIE D. STICKLER,
Petitioner,

v.

DAN TEHAN,
Sheriff of Hamilton County, Ohio,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals
For the Sixth Circuit.

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STATEMENT OF THE CASE

Petitioner was convicted by a jury in the Court of Common Pleas of Hamilton County, Ohio, on June 26, 1961, upon a four-count indictment charging violation of the Ohio Securities Act, and was thereafter sentenced to four concurrent terms of not less than one nor more than five years in the Ohio State Penitentiary. The conviction was affirmed by the Court of Appeals, First Appellate District of Ohio, on May 22, 1962. Petitioner's appeal to the Supreme Court of Ohio was dismissed by that court on March 20, 1963; and this Court thereafter

dismissed petitioner's appeal and denied certiorari, 375 U. S. 935, and denied his petition for rehearing, 376 U. S. 935.

On February 28, 1964 petitioner invoked the jurisdiction of the United States District Court for the Southern District of Ohio, Western Division, by filing a petition for writ of habeas corpus. Upon hearing and presentation of evidence, the district court denied the petition on August 6, 1964 and entered its memorandum opinion and order. The judgment of the district court was affirmed on appeal to the Sixth Circuit Court of Appeals on August 19, 1966, and rehearing was denied on September 21, 1966. It is from the decision and order of affirmance entered by the Court of Appeals that petitioner seeks relief from this Court.

On May 12, 1961, the Grand Jury of Hamilton County, Ohio, returned a four (4) count indictment against the appellant, reading substantially as follows:

That at the County of Hamilton, State of Ohio, Leslie D. Stickler, on the 3rd day of January, 1961, knowingly and intentionally did unlawfully sell, cause to be sold, offered for sale, or caused to be offered for sale, to Robert Steffen, a security, to-wit: A written instrument evidencing a promise to pay money, which the said Leslie D. Stickler was not licensed to sell securities in accordance with the provisions of Ohio Revised Code, Sections 1707.-01-1707.45 inclusive.

The second count, relating to the same instrument, that said Leslie D. Stickler, at Hamilton County, Ohio, on the 3rd day of January, 1961, did knowingly, unlawfully and intentionally sell, cause to be sold, offered for sale, or caused to be offered for sale, to Robert Steffen a security, to-wit: A written instrument evidencing a promise to pay money, which security was not then and there registered by de-

scription or by qualification in accordance with the provisions of Ohio Revised Code, Sections 1707.01-1707.45, inclusive.

The third and fourth counts read the same as one and two, respectfully; however, they relate to a separate instrument.

Many preliminary motions were made by the Appellant, among which was a request for a Bill of Particulars, which was granted in part.

After all motions were disposed of, the trial began on June 15, 1961, before a jury. Appellant was found guilty of all four counts of the indictment.

The Appellant was 38 years old and had actively practiced as a lawyer since 1948 (T. 322). Robert Steffen was the owner and operator of a pizza-store franchise located in Deer Park, a suburb of Cincinnati.

Until September, 1959, neither of the two men had met (T. 54). Some time during that month, Steffen was in the law offices of another lawyer, Edgar I. Shott * * * who also was indicted and convicted of a similar offense * * *. Steffen knew Shott as a patron of his pizza store (T. 54-55). As an outcome of this acquaintance, the meeting in Shott's office resulted. The two of them discussed a certain business venture. Some fifteen minutes after this discussion, the Appellant made his appearance. Steffen had never seen the Appellant before that particular moment (T. 55).

The Appellant had some checks and a note which he gave to Shott. Shott then asked the Appellant to tell Steffen of the "operation" (T. 56).

This was the "operation": The Appellant represented himself as a contact for certain contractors and builders located in various parts of the country; that he (Appellant) would accept money for investment with these people; they (builders and/or contractors) needed the money in order to get their construction under roof, for they were

unable to obtain conventional financing; after they had proceeded to a certain point in their constructions, they were able to get the customary type of financing; for the services of the Appellant, they were willing to pay a good return; the Appellant then would split this profit with his particular investor. To secure the arrangement, the Appellant, at the time he received the money from the particular investor, would give to him a promissory note due on a certain date in the future, plus two checks, one representing the amount invested and the other representing the profit from the investment, both checks were post-dated to fall due on the same date as the note.

Some time around Christmas, 1960, the Appellant contacted Steffen by telephone and stated he was going to Florida on the "operation," and on his return would like Steffen to invest with him directly, as the Appellant was dissatisfied with in-between-men, i.e., Shott (T. 73 & 74).

On January 3, 1961, Steffen made his first and only investment with the Appellant. Steffen gave Appellant $5,000.00 and received from him a promissory note for $6,000.00. On this same date, a promissory note issued by Shott to Steffen was due. This was in the amount of $6,000.00 By previous arrangement, Appellant, Shott and Steffen had agreed that the Shott note would be cancelled and a new one would be issued by Appellant. This was done. Therefore, at this time, Steffen received two notes from Appellant (T. 57-61), and the customary checks. These two notes were the subject matter of the indictment tried.

Why did the Appellant start this "operation" and how big was it? The trial record reflects that seven people were defrauded of $143,500.00. The entire amount manipulated by Appellant was not brought out in court, except that it amounted to over $3,000,000.00 (T. 38).

On January 6, 1961, the Appellant's scheme collapsed. Beginning on this date and continuing to the 8th, various investors were called ot the Appellant's law office; they were told there were no contractors, there were no builders, and that he, the Appellant, was "borrowing from Peter to pay Paul" (T. 72, 167-168, 183-184, 228, 243-244, 271-272).

It was during the meetings in the first part of January, 1961, that Appellant explained why he started his "operation." He stated that his activities were started in order to make good an earlier embezzlement in a collection agency formerly operated by him (T. 72, 271).

ARGUMENT

Petitioner is raising again the same arguments he has raised in his appeal to this court from the judgment of the Supreme Court of Ohio (see jurisdictional statement filed during October, 1963 term, No. 601); the court denied certiorari then, *375 U.S. 935*.

The United States Court of Appeals for the Sixth Circuit wrote an excellent opinion in this matter and the respondent cites that opinion to this Court. See *365 F.(2d) 199*. The opinion is correctly reproduced as appendix A of petitioner's appendix to his petition for a writ of Certiorari.

CONCLUSION

"The function of habeas corpus is exhausted when it is ascertained that the agency under whose order the petitioner is being held had jurisdiction to act. If the writ is to issue, mere error in the proceeding which resulted in the detention is not sufficient . . . It is not enough to show that the decision was wrong, or that incompetent evidence was admitted or considered. If it cannot be said that there were procedural irregularities of such a

nature or magnitude as to render the hearing unfair, or that there was no evidence to support the order, the inquiry is at an end" (*Eagles* v. *Samuels,* 329 US 304).

The courts of Ohio have decided that the law in question and the trial of the petitioner was valid. That decision is binding upon the federal courts unless some inhibition of the Constitution of the United States or of a law of the United States is violated, *Crowley* v. *Christensen,* 137 US 86; *Andrews* v. *Swartz,* 152 US 272; *House* v. *Mayo,* 324 US 42; *Harlan* v. *McGourin,* 218 US 442; *In Re Schneider,* 148 US 162.

The appellant was not denied due process of law and there were no procedural irregularities of such a magnitude or nature as to render the trial unfair, therefore this petition should be dismissed.

Respectfully submitted,

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